

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2548 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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DHARMENDRA BHAI DALSUKHBHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR SATYEN B RAWAL for Petitioner  
MR UDAY BHATT, APP for Respondent No. 1  
RULE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 24/09/1999

ORAL JUDGEMENT

Heard learned Counsel Mr. Satyen Rawal for the petitioner, Mr. Uday Bhatt, learned APP for respondent no.1 State. Respondent no.2 (original complainant) though served has not cared to appear either personally or through learned counsel.

Complaint produced at page nos. 6 to 9 indicates

on account of return of cheque allegedly given by the petitioner to respondent no.2 dated 14.10.1998, complaint was filed in the Court of learned Chief Judicial Magistrate, Surendranagar on the strength of private complaint filed by respondent no.2 and court registered the same as Criminal Case No. 18 of 1999 and the process is already issued for the alleged offence punishable under sec. 138 of Negotiable Instruments Act. After lapse of several months, in respect of same prosecution, the respondent complainant filed another complaint in Dasada Police Station of Surendranagar District which came to be registered as I.CR No.9 of 1999. Contents of FIR lodged with Dasada Police are identical to the case put forward by respondent no.2 in the Court of learned Chief Judicial Magistrate, Surendranagar. Mr. Rawal, learned counsel appearing for the petitioner has rightly argued that FIR lodged by respondent no.2 in Dasada Police Station, copy of which is produced at page nos. 10 to 14 is a second complaint before the another forum. Thus, the complainant has filed another complaint for the same prosecution which is pending before the learned Chief Judicial Magistrate, Surendranagar. Trial before the learned Chief Judicial Magistrate, Surendranagar is already going on for the offence under section 138 of the Negotiable Instruments Act and case is pending hearing and disposal. Placing reliance on sub-sec.(1) of Sec.220 of Cr.P.Code, Mr. Rawal has argued that complainant ought to have clubbed both the offences for being tried at one trial if he really intended to do so while filing private complaint before the learned Chief Judicial Magistrate, Surendranagar which came to be registered as Criminal Case No.18 of 1999. I would like to reproduce sub-sec.(1) of Sec.220 of Cr.P.Code :-

"220. Trial for more than one offence.- (1) If, in one series of the acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. "

The above provisions are self-explanatory and need no interpretation. The act of filing of FIR by the respondent - complainant in Dasada Police Station was not at all warranted. This is a second complaint for identical set of facts and it cannot be sustained and requires to be quashed and set aside by allowing the present petition. Learned APP Mr. Bhatt, after considering both the complaints vis-a-vis above provision of law, has fairly submitted that the Court should pass an appropriate order in view of the averments made in the petition.

In the result, petition is allowed. The impugned

FIR being I.CR No.9/99 registered with Dasada Police Station, District : Surendranagar for the offences punishable under sections 406, 420 of the I.P.Code is hereby quashed and set aside. It is, however, clarified that this order would not come in the way of the learned Chief Judicial Magistrate, Surendranagar to hear and dispose of Criminal Case pending before him on merits and in accordance with law.

Rule is made absolute.

24.09.1999 [ C.K. BUCH, J ]

\*rawal